IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

Crl.MC.No. 688 of 2007()

CC.289/2006 of JUDL.MAGISTRATE OF FIRST CLASS-I, PERAMBRA

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PETITIONER: 3RD ACCUSED

PRABHAKARAN NAIR, ARAMKOTTAKKAL,
S/O CHAKKINI NAIR, POONATH P.O.,
AVIDANALLOR VILLAGE, KOYILANDY TALUK.

BY ADV. SRI.SANTHARAM.P

RESPONDENTS: STATE AND COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. NELLOLI NARAYANI AMMA,
KUTTIKKUNNUMMAL, CHANGAROTH P.O.,
CHANGAROTH AMSOM DESOM, KOYILANDY TALUK.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 14/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.688 of 2007

Dated this the 14th day of March, 2007

ORDER

The petitioner is the 3rd accused in a prosecution, inter alia, for the offence punishable under Section 379 read with 34 I.P.C. The police had registered a crime. But it is submitted that the same has been referred by the police after completing the investigation. Later the 2nd respondent filed a private complaint and in that private complaint allegedly without proper application of mind, the learned Magistrate has taken cognizance and issued summons against the petitioner. The petitioner has not appeared personally before the learned Magistrate. He has appeared through counsel. He has rushed to this Court with a prayer that powers under Section 482 Cr.P.C may be invoked to quash the proceedings against him.

2. Cognizance is taken against the petitioner on a private complaint. As it always happens, such cognizance is taken exparte. An indictee against whom cognizance has been taken in a private complaint warrant offence has the option under law to appear before the learned Magistrate and claim discharge under Section 245(2) or 245(1) Cr.P.C. That is the normal course which is available to a person against whom ex parte cognizance has been taken by the learned Magistrate allegedly without proper application of mind. In

every such case, this Court cannot be expected to invoke its extraordinary inherent jurisdiction under Section 482 Cr.P.C. It is for such indictee, ordinarily and normally to appear before the learned Magistrate and claim discharge under Section 245(2) or 245(1) Cr.P.C. I find no compelling circumstances to deviate from the normal procedure and invoke the powers of this Court under Section 482 Cr.P.C. In every case where discharge under Section 245(2) or 245(1) Cr.P.C is a possibility, this Court cannot be expected to invoke its jurisdiction under Section 482 Cr.P.C.

3. The learned counsel for the petitioner submits that if insistence were made on the personal appearance of the petitioner on all dates of posting, that would cause the petitioner great hardship and prejudice. Vexatious intent of the complainant would thereby succeed. I find no reason why the learned Magistrate should insist on the personal appearance of the petitioner. The petitioner can apply for exemption. In the facts and circumstances of this case, I am of the opinion that the learned Magistrate must favourably consider such application for exemption. The learned counsel for the petitioner undertakes that there is no dispute regarding the identity of the petitioner/3rd accused. The petitioner can make proper application through counsel for exemption.

4. This Crl.M.C is, in these circumstances, dismissed, but with the observation that the petitioner can appear through counsel and claim discharge under Section 245(2) or 245(1) Cr.P.C. Personal appearance of the petitioner need be insisted only if the learned Magistrate is satisfied that the petitioner is not entitled for discharge under Section 245(2) or 245(1) Cr.P.C. Till then, the petitioner can be permitted to be represented by counsel.

5. Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

rtr/-